

November 30, 2010

**Ex Parte Submission – Filed Electronically Via ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

RE: Notice of Telephonic *Ex Parte* Communication, Preserving the Open Internet GN Docket No. 09-191; Broadband Industry Practices WC Docket No. 07-52 & Docket 10-127 (Framework for Broadband Internet Service).

Dear Ms. Dortch:

On November 29, 2010, I spoke via telephone with Sharon Gillett, Chief of the Wireline Competition Bureau, and Rebecca Goodheart, regarding the circumstances surrounding Level 3's issuance of a statement (copy attached) regarding a recent dispute with Comcast. During the discussion, I answered questions from Ms. Gillett regarding the past relationship of Level 3 and Comcast, the recent demand by Comcast that Level 3 pay a discriminatory toll for additional traffic, and the nature of the Internet Protocol traffic exchanged between the Comcast and Level 3 networks. I reiterated that Level 3 believed that Comcast had imposed a new and discriminatory fee on Level 3 that could adversely impact the openness and innovation that has historically characterized the Internet.

Sincerely,



John M. Ryan  
Assistant Chief Legal Officer  
Level 3 Communications, Inc.

Attachment

### **Level 3 Communications Issues Statement Concerning Comcast's Actions**

The following statement can be attributed to Thomas Stortz, Chief Legal Officer of Level 3 Communications, Inc.:

On November 19, 2010, Comcast informed Level 3 that, for the first time, it will demand a recurring fee from Level 3 to transmit Internet online movies and other content to Comcast's customers who request such content. By taking this action, Comcast is effectively putting up a toll booth at the borders of its broadband Internet access network, enabling it to unilaterally decide how much to charge for content which competes with its own cable TV and Xfinity delivered content. This action by Comcast threatens the open Internet and is a clear abuse of the dominant control that Comcast exerts in broadband access markets as the nation's largest cable provider.

On November 22, after being informed by Comcast that its demand for payment was "take it or leave it," Level 3 agreed to the terms, under protest, in order to ensure customers did not experience any disruptions.

Level 3 operates one of several broadband backbone networks, which are part of the Internet and which independent providers of online content use to transmit movies, sports, games and other entertainment to consumers. When a Comcast customer requests such content, for example an online movie or game, Level 3 transmits the content to Comcast for delivery to consumers.

Level 3 believes Comcast's current position violates the spirit and letter of the FCC's proposed Internet Policy principles and other regulations and statutes, as well as Comcast's previous public statements about favoring an open Internet.

While the network neutrality debate in Washington has focused on what actions a broadband access provider might take to filter, prioritize or manage content requested by its subscribers, Comcast's decision goes well beyond this. With this action, Comcast is preventing competing content from ever being delivered to Comcast's subscribers at all, unless Comcast's unilaterally-determined toll is paid – even though Comcast's subscribers requested the content. With this action, Comcast demonstrates the risk of a "closed" Internet, where a retail broadband Internet access provider decides whether and how their subscribers interact with content.

It is our hope that Comcast's senior management, for whom we have great respect, will closely consider their position on this issue and adopt an approach that will better serve Comcast, and Comcast's customers.

While Comcast's position is regrettable, Level 3 remains open and willing to work through these issues with Comcast. However, Level 3 does not seek any "special deals" or arrangements not generally available to other Internet backbone companies.

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Given Comcast's currently stated position, we are approaching regulators and policy makers and asking them to take quick action to ensure that a fair, open and innovative Internet does not become a closed network controlled by a few institutions with dominant market power that have the means, motive and opportunity to economically discriminate between favored and disfavored content.